

STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND
REHABILITATION

In the Matter of the Rolette County Law Enforcement Center,
Rolla, North Dakota

ORDER OF TEMPORARY CLOSURE

This order is issued in accordance with N.D.C.C. § 12-44.1-25.

The North Dakota Department of Corrections and Rehabilitation ("DOCR") makes the following:

Findings of Fact

I.

The Rolette County Law Enforcement Center (RCLEC) is a grade one correctional facility in Rolla, Rolette County, North Dakota. RCLEC is operated under the authority of the Rolette County Sheriff Nathan A. Gustafson, who also serves as the facility administrator. Sheriff Nathan A. Gustafson and the Rolette County Law Enforcement Center are under the governing authority of the Rolette County Commissioners.

II.

On June 4, 2020 at approximately 12:45 a.m., Lacey Higdem died while in custody at RCLEC. DOCR correctional facility inspectors conducted an initial review of the in-custody death in accordance with N.D.C.C. §§ 12-44.1-24 and 12-44.1-25 and current North Dakota Correctional Facility Standards on June 9, 2020. Based on the initial review, the DOCR correctional facility inspectors are in the process of completing an in-depth investigation.

III.

RCLEC staff did not complete a medical screening of Lacey Higdem.

IV.

Surveillance camera video shows Lacey Higdem exhibiting signs of intoxication, including hallucinations during the booking process and throughout her time in custody and difficulty with balance during an interaction with RCLEC staff.

V.

Surveillance camera video does not show RCLEC staff completing observations of Lacey Higdem's wellbeing every fifteen minutes or every hour.

VI.

The DOCR correctional facility inspectors conducted the most recent annual facility inspection of RCLEC on October 24, 2019. The DOCR correctional facility inspectors' report includes four (4) areas of noncompliance with the North Dakota Correctional Facility Standards, including non-compliance with Standard 32, which relates to inmate observation, and Standard 59, which relates to intoxication management.

VII.

RCLEC did not implement corrective actions to address areas of noncompliance from the DOCR inspection report from the inspection on October 24, 2019.

Based on the above Findings of Fact, the DOCR makes the following:

Conclusions of Law

I.

RCLEC is a county correctional center subject to N.D.C.C. Chapter 12-44.1.

II.

N.D.C.C. § 12-44.1-24 requires the DOCR to prescribe rules establishing minimum standards for the construction, operation, and maintenance of county correctional facilities; prescribe rules for the care and treatment of inmates; cause the rules and regulations be made available to inmates; and appoint a correctional facility inspector qualified by special experience, education, or training to inspect correctional facilities. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

III.

The DOCR has promulgated Correctional Facility Standards in accordance with N.D.C.C. § 12-44.1-24 and has appointed a correctional facility inspector in accordance with the requirements of N.D.C.C. § 12-44.1-24.

IV.

N.D.C.C. § 12.44.1-25 authorizes the Director of the DOCR to issue a report of non-compliance if a correctional facility is in violation of any required minimum standards, applicable state or federal law, or DOCR rules for correctional facilities.

V.

When the DOCR determines that the nature and extent of deficiencies in a correctional facility subject to N.D.C.C. Chapter 12-44.1 are such that an immediate order of full, partial, or temporary closure is necessary to protect the health and safety of the inmates,

correctional facility staff, law enforcement, visitors, or the public, N.D.C.C. § 12-44.1-25 authorizes the Director of the DOCR to issue an order of full, partial, or temporary closure.

VI.

Standard 21 of the North Dakota Correctional Facility Standards requires every facility have a written policy and procedure that includes, in relevant part, a written record of a medical screening of the following: illnesses; medication; use of alcohol and other drugs; mental health issues; history or thoughts of self-harm; observations of behavior, including state of consciousness, mental status, appearance, conduct, tremor and sweating; etc.

Policy 2.01 in RCLEC's policy and procedure manual requires, in relevant part, the following:

- medical, mental health, and suicide screening forms be completed as part of admission;
- a "Correctional Officer shall perform a medical screening located in the JMS P1 LERMS on all inmates at intake";
- "[a]ll inmates shall complete a medical screening as part of the booking process"
- "[i]f an arrestee refuses to cooperate with the medical screening, the screener will complete as much of the health assessment as reasonably possible and the arrestee will be closely observed until he/she cooperates with the remainder of the screening process."
- "staff shall record their findings on the medical screening form";
- the medical screening includes information on prescription or illegal drug use and history or current symptoms of substance abuse withdrawal;
- a Correctional Officer will "screen and observe all inmates being admitted for possible mental health problems"; and
- the Correctional Officer will ensure that the inmate is neither "[d]isoriented (the inmate must know where he/she is, the date, and what is taking place around him/her)" nor "[s]eriously aggravated and displaying inappropriate behavior (such as not being able to control anger or having visions or hallucinations)."

Standard 4 provides, in relevant part, "[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to demonstrate the facility's compliance with its policy."

RCLEC has policy that meets the requirements of Standard 21 of the North Dakota Correctional Facility Standards. However, RCLEC did not follow its policy. The actions of RCLEC staff did not meet the minimum requirements of Standard 21 because RCLEC staff did not complete a medical screening of Lacey Higdum. Therefore, RCLEC violated Standard 21 of the North Dakota Correctional Facility Standards.

VII.

Standard 32 of the North Dakota Correctional Facility Standards requires correctional facilities have a written policy and procedure for inmate observation that requires trained staff to "personally observe each inmate during each hourly period on an irregular

basis” and “personally observe inmates who exhibit suicidal tendencies, self-destructive behavior, emotional distress, or have specialized medical problems at more frequent intervals as the inmate’s condition requires.” Standard 32 of the North Dakota Correctional Facility Standards also requires “documentation of inmates in observation must include (a) [r]eason for placement; (b) [s]taff assigned to supervise; (c) [l]ocation, date, time, activities, and condition of inmate at each check; (d) [a]ctions by the agency to provide specialized outside services for an inmate; and (e) reason for removal from observation.”

RCLEC has policies for observation of all inmates and additional requirements for intoxicated and special needs inmates, including the following:

- Policy 3.02 in RCLEC’s policy and procedure manual requires, in relevant part, the following:
 - “Rolette County Jail Personnel will physically check all inmates on an hourly basis, at irregular intervals...to insure the safety and security of the facility, and the physical and emotional well-being of the inmates.”
 - “Any person classified as a high risk inmate, mentally ill, intoxicated, emotionally or physically unstable, or anyone that poses a threat to themselves, staff or other inmates are considered special needs inmates. Inmates classified in this category shall be personally observed by a Correctional officer at more frequent intervals as their conditions require special attention. CO’s will log 15 minute checks on Special Needs inmates... The Shift Supervisor will assign a specific officer instructions as to direct supervision of the inmate, until he/she feels it is no longer necessary to keep inmate on ‘Special Watch’.”
- Page 5 of Policy 2.01 in RCLEC’s policy and procedure manual requires, in relevant part, if an inmate is disoriented or seriously aggravated and displaying inappropriate behavior (such as ... having visions or hallucinations), the “Correctional Officer will place the inmate in the holding cell and observe his/her behavior every fifteen (15) minutes.”

Standard 4 of the North Dakota Correctional Facility Standards provides, in relevant part, “[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to demonstrate the facility’s compliance with its policy.”

RCLEC has policy compliant with Standard 32 of the North Dakota Correctional Facility Standards. However, RCLEC did not follow its policy because RCLEC did not complete hourly checks or fifteen (15) minute observations of Lacey Higdem. Because RCLEC staff neither completed checks hourly nor checks at more frequent intervals, RCLEC violated Standard 32 of the North Dakota Correctional Facility Standards.

VIII.

Standard 59 of the North Dakota Correctional Facility Standards requires every facility “have a written policy and procedure for intoxication management that includes a definition of intoxication if the facility holds persons who appear intoxicated or under the influence of alcohol or controlled substances...”

Policy 3.02 in RCLEC's policy and procedure manual meets these requirements. However, Standard 4 of the North Dakota Correctional Facility Standards provides, in relevant part, "[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to demonstrate the facility's compliance with its policy." RCLEC did not follow its policy. Therefore, RCLEC violated Standard 59 of the North Dakota Correctional Facility Standards.

IX.

The DOCR facility inspectors' initial review shows that RCLEC has failed to comply with at least three of one-hundred and eight North Dakota Correctional Facility Standards. Based on the nature of the violations and the in-custody death of Lacey Higdem, the DOCR Director has determined that RCLEC's noncompliance with North Dakota Correctional Facility Standards presents a danger to the health and safety of inmates and justifies a temporary closure without issuance of a prior order of non-compliance, pending a full investigation of the in-custody death of Lacey Higdem.

ORDER FOR TEMPORARY CLOSURE

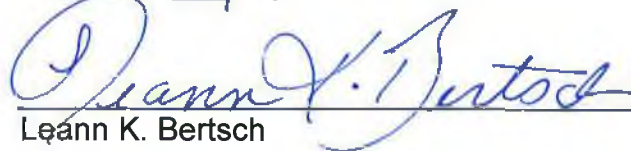
Based on the above Findings of Fact and Conclusions of Law, the DOCR issues this Order of Temporary Closure.

IT IS ORDERED THAT, in accordance with N.D.C.C § 12-44.1-25(4), RCLEC be temporarily closed effective immediately, with all inmates to be relocated before June 22, 2020.

IT IS FURTHER ORDERED THAT RCLEC shall remain subject to this Temporary Order for Closure through the duration of the investigation of the in-custody death of Lacey Higdem and until the DOCR vacates this order.

IT IS FURTHER ORDERED THAT upon determination by the DOCR that the RCLEC has fully complied with all requirements of the DOCR, the DOCR shall vacate this order, subject to its continuing jurisdiction and authority under N.D.C.C. ch. 12-44.1 to continue to inspect the RCLEC and establish conditions and requirements it determines are necessary for the safety of the inmates, staff, visitors, and the public based upon its inspections.

Dated this 18th day of June, 2020



Leann K. Bertsch
Director

North Dakota Department of Corrections and Rehabilitation